



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NEXTERA ENERGY MARKETING, LLC, :

Plaintiff, :

- against - :

MACQUARIE ENERGY LLC, :

Defendant. :

-----X

22-CV-1345 (VM) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves Defendant's request that Plaintiff be ordered to produce communications between Plaintiff's outside counsel and outside counsel for third-party EGT regarding bullet points reflecting thoughts of Plaintiff's outside counsel on potential items to address in a declaration to be provided by EGT. (See Dkts. 73, 74.) The Court held oral argument and has reviewed the parties' correspondence and exhibits as well as the sample documents provided by Plaintiff at the Court's request for in camera review. The redacted material largely consists of core attorney work product. Defendant has no substantial need for outside counsel's thoughts and impressions and will be able to depose the fact witness who provided the declaration on behalf of EGT. Further, the Court finds that at the time outside counsel for Plaintiff and for EGT communicated with each other, (1) Plaintiff's counsel did not disclose work product in a manner inconsistent with the purpose of work product protection; and (2) Plaintiff and EGT had a common legal interest, agreed upon impliedly even if not expressly, in the interpretation and enforcement of EGT's Emergency Response Operational Flow Order to the extent disputed by Defendant. That Plaintiff initially served a deposition subpoena on EGT neither detracts from their common legal interest nor compels a conclusion that their

interests were adversarial. Accordingly, the Court finds that Plaintiff's outside counsel did not waive work product protection in the subject communications. See *generally Subramanian v. Lupin Inc.*, No. 17-CV-5040, 2019 WL 12038811 (S.D.N.Y. Sept. 4, 2019).

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', with a long horizontal stroke extending to the right.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: February 9, 2024
New York, New York

Copies transmitted to all counsel of record.